

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 80072(a)

Specific Purpose:

The Department is amending this regulation to exclude children's residential facilities from the personal rights requirements specified in this section.

Factual Basis:

This amendment is necessary to clarify that the personal rights requirements for children's residential facilities are not found in the General Licensing Requirements. The personal rights requirements for children's residential facilities are found in category specific regulations and incorporate the personal rights found in the General Licensing Requirements and Section 16001.9 of the Welfare and Institutions Code.

Section 83072(a)

Specific Purpose:

The Department is amending this regulation to exclude the personal rights requirements of the General Licensing Requirements for children's residential care.

Factual Basis:

This amendment is necessary to clarify that the personal rights requirements found in this section of the Small Family Home Regulations stand alone.

Final Modification

Section 83072(a) has been deleted in the interest of precision and clarity. The language in this section served an introductory purpose that was not necessary to convey the meaning of the regulations.

Section 83072(b)

Specific Purpose:

The Department is adopting this regulation to clarify that small family homes caring for six or more children shall post a listing of foster children's personal rights.

Factual Basis:

The adoption of this regulation is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedures Act, Government Code Sections 11349(a) and (d), respectively. This regulation is necessary for consistency with Section 1530.91(b) of the Health and Safety Code that requires facilities licensed to provide foster care for six or more children to post a listing of a foster child’s rights as specified in Section 16001.9 of the Welfare and Institutions Code.

Final Modification

Section 83072(b) – renumbered as Section 83072(a)

This section is being renumbered from Section 83072(b) to Section 83072(a) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

Section 83072(c)

Specific Purpose:

The Department is amending this regulation to ensure that each schoolage child placed in a small family home is provided with an orientation clearly explaining the personal rights of the child.

Factual Basis:

This amendment is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedures Act, Government Code Sections 11349(a) and (d), respectively. This regulation is necessary for consistency with Section 1530.91(a) of the Health and Safety Code that requires facilities caring for children to provide each schoolage child with an age and developmentally appropriate orientation explaining the personal rights of children as specified in Section 16001.9 of the Welfare and Institutions Code.

Final Modifications

Section 83072(c) - renumbered as Section 83072(b)

The Initial Statement of Reasons (ISOR) inadvertently referred to amending this section. This is a new section and correctly should have been referred to in the ISOR as being adopted.

This section was originally adopted as new Section 83072(c).

This section has been renumbered from Section 83072(c) to Section 83072(b) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

In response to public comments received, the phrase “and addresses the child’s questions and concerns” has been incorporated as part of this section. This change incorporates language contained in Section 1530.91(a) of the Health and Safety Code into the regulations. This language was inadvertently left out of the original draft of these regulations.

Lastly, in the originally proposed regulations, the first sentence had the phrase “who is placed in foster care” inadvertently following the word “representative”, creating an unclear and unnecessary requirement. For clarity, the phrase “who is placed in foster care” now correctly follows the word “child” where the phrase was intended to be when the regulations were originally written.

Section 83072(d) et seq.

Specific Purpose:

The Department is amending this regulation to clarify that each child in care shall be advised and given a copy of their personal rights. This regulation incorporates specified personal rights of the General licensing Requirements and Section 16001.9 of the Welfare Institutions Code in order to list all the personal rights accorded to children placed in a small family home.

Factual Basis:

This amendment is necessary to clarify the requirement for licensees, that children in small family homes are to be advised and given a copy of their personal rights. Further, this regulation is amended to meet the “necessity” and “consistency” standard of the Administrative Procedures Act, Government Code Sections 11349(a) and (d), respectively. This regulation is necessary for consistency with Section 27 of the Welfare and Institutions Code that requires the Department to list in regulation specified rights of foster children found in Section 16001.9(a) of the Welfare and Institutions Code.

In addition to the personal rights listed in Section 16001.9 of the Welfare and Institutions Code, this regulation incorporates specified personal rights of the General Licensing Requirements in order to list all the personal rights accorded to children placed in a small family home. Based on incorporating these rights, the “Personal Rights” section of the Small Family Home regulations stand alone.

Final Modifications

Section 83072(d) - renumbered as Section 83072(c)

This section was originally renumbered from Section 83072(b) to Section 83072(d) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d) to Section 83072(c) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

Various grammatical corrections have been made for clarity.

Post Hearing Modification

Section 83072(d)(1) – renumbered as Section 83072(c)(1)

Specific Purpose:

This section was originally renumbered from Section 83072(b)(1) to Section 83072(d)(1) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(1) to Section 83072(c)(1) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

In response to public comments, this section has been amended to delete a provision that allows visits only by mutual agreement between the licensee and visitors.

Factual Basis:

This amendment is necessary to resolve a conflict between provisions of section 83072(c)(1) of the Small Family Home regulations and Section 16001.9(a)(7) of the Welfare and Institutions Code. This section has been amended to remove the provision that allows licensees to restrict visits at will.

Post Hearing Modification

Section 83072(d)(1)(A) – renumbered as Section 83072(c)(1)(A)

Specific Purpose:

This section was originally renumbered from Section 83072(b)(1)(A) to Section 83072(d)(1)(A) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(1)(A) to Section 83072(c)(1)(A) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

In response to public comments, this section has been amended to incorporate the provisions of Section 16001.9(a)(7) of the Welfare and Institutions Code relating to visitation rights of siblings into existing regulations.

Factual Basis:

This amendment is necessary to clarify that a foster child's brothers and sisters have the right to visit unless prohibited by court order. This section now accurately reflects the provisions of Section 16001.9(a)(7) of the Welfare and Institutions Code with regards to visits by siblings.

Post Hearing Modification

New Section 83072(c)(1)(A)1.

Specific Purpose:

This section has been adopted to transfer information that was previously contained in Section 83072(c)(1)(A).

Factual Basis:

The adoption of this regulation is necessary to separate the different provisions for visitation by relatives from those for siblings. In response to public comments, Section 83072(c)(1)(A) was amended to specify that sibling visits can only be prohibited by court order. This necessitated moving the conditions for prohibiting visits by other relatives to this new subsection. In making this transfer, the word "other" was added before "relatives" to clarify that these provisions applied to relatives other than siblings. The phrase "during waking hours" was deleted since it is duplicative to the provision in Section 83072(c)(1) that allow restrictions to visits that would infringe on the rights of others.

Post Hearing Modification

Section 83072(d)(3) – renumbered as Section 83072(c)(3)

Specific Purpose:

This section was originally renumbered from Section 83072(b)(3) to Section 83072(d)(3) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(3) to Section 83072(c)(3) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

In response to public comments received, this section has been amended to accurately reflect the provisions of Welfare and Institutions Code Section 16001.9(a)(11).

Factual Basis:

This amendment is necessary to incorporate the provision from Section 16001.9(a)(11) of the Welfare and Institutions Code that gives children the right to manage their own income consistent with their age and developmental level into the regulation.

Post Hearing Modification

Section 83072(d)(6) – renumbered as Section 83072(c)(6)

Specific Purpose:

This section was originally renumbered from Section 83072(b)(6) to Section 83072(d)(6) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(6) to Section 83072(c)(6) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

In response to public comments received, this section has been amended to accurately reflect the provisions of Welfare and Institutions Code Section 16001.9(a)(9).

Factual Basis:

This amendment is necessary to delete provisions that allowed for prohibitions of phone calls that were not consistent with the provisions of Section 16001.9(a)(9) of the Welfare and Institutions Code. This section has been amended to specify that children have the right to make and receive phone calls unless prohibited by court order.

Post Hearing Modification

Section 83072(d)(6)(A) – renumbered as Section 83072(c)(6)(A)

Specific Purpose:

This section was originally renumbered from Section 83072(b)(6)(A) to Section 83072(d)(6)(A) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section is now being renumbered from Section 83072(d)(6)(A) to Section 83072(c)(6)(A) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

In response to public comments, this section has been amended to specify that licensees can place restrictions on phone use and to provide an introduction into Sections 83072(d)(6)(A)1.-3. which list acceptable reasons for these restrictions. Information previously contained in this section regarding reimbursement for long distance calls has been relocated to new Section 83072(c)(6)(A)1.

Factual Basis:

This amendment is necessary to clarify that that while children can only prohibited from making and receiving phone calls by court order, licensees can place reasonable restrictions on phone use.

Post Hearing Modification

New Section 83072(c)(6)(A)1.

Specific Purpose:

In response to public comments, this section has been adopted to specify that licensees can place restrictions on long distance phone calls with documentation that they have not received reimbursement for previous calls.

Factual Basis:

The adoption of this section is necessary to specify one of the allowable reasons for restrictions to be placed on telephone calls.

Post Hearing Modification

New Section 83072(c)(6)(A)2.

Specific Purpose:

In response to public comments, this section has been adopted to specify that licensees can place restrictions on phone calls in accordance with the facility's discipline policies.

Factual Basis:

The adoption of this section is necessary to specify one of the allowable reasons for restrictions to be placed on telephone calls.

Post Hearing Modification

New Section 83072(c)(6)(A)3.

Specific Purpose:

In response to public comments, this section has been adopted to specify that licensees can place restrictions on telephone use that infringes on the rights of others or restricts the availability of the phone during emergencies.

Factual Basis:

The adoption of this section is necessary to specify allowable reasons for restrictions to be placed on telephone calls.

Post Hearing Modification

Section 83072(d)(6)(B) – renumbered as Section 83072(c)(6)(B)

Specific Purpose:

This section was originally renumbered from Section 83072(b)(6)(B) to Section 83072(d)(6)(B) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section is now being renumbered from Section 83072(d)(6)(B) to Section 83072(c)(6)(B) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

In response to public comments, this section has been amended to incorporate provisions for documentation of an approval process for any restrictions placed on telephone use. The requirements previously included in this section are now in Section 83072(c)(6)(A)1.

Factual Basis:

This amendment was made in response to concerns expressed in public comments that provisions of existing regulation that allow restrictions on phone use at the licensees' discretion were in conflict with the provisions of AB 899. The language added to this section specifies procedures to be used in approving restrictions on telephone use that protect the children's right to make and receive phone call as provided for in Welfare and Institutions Code Section 16001.9(a)(7).

The language previously contained in this section has been deleted to avoid redundancy since this text is now in Section 83072(c)(6)(A)1.

Final Modification

Section 83072(d)(6)(C) – renumbered as Section 83072(c)(6)(C)

This section was originally renumbered from Section 83072(b)(6)(C) to Section 83072(d)(6)(C) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(6)(C) to Section 83072(c)(6)(C) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

In response to public comments, this section has been amended to specify that children cannot be restricted from making telephone calls to certain individuals as a form of discipline or for non payment of long distance phone charges. The phrase “(including brothers and sister)” was deleted since the term “family member” would already include siblings. The phrase “unless prohibited by a court order” was replaced with “except by court order” for purposes of grammatical precision and clarity.

Final Modification

Section 83072(d)(10) – renumbered as Section 83072(c)(10)

This section was originally renumbered from Section 83072(b)(10) to Section 83072(d)(10) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(10) to Section 83072(c)(10) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

A grammatical correction has been made for clarity.

Final Modification

Section 83072(d)(16)(A) – renumbered as Section 83072(c)(16)(A)

This section was originally renumbered from Section 83072(b)(16)(A) to Section 83072(d)(16)(A) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(16)(A) to Section 83072(c)(16)(A) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

This section has been deleted since it is not regulatory in nature. It provides a procedural reference to the Health and Safety Code that is not necessary to include in the regulations.

Final Modification

Section 83072(d)(17) – renumbered as Section 83072(c)(17)

This section was originally renumbered from Section 83072(b)(17) to Section 83072(d)(17) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(17) to Section 83072(c)(17) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

For correct formatting, the information previously contained in Section 83017(c)(17)(A) has been incorporated into this section.

Final Modification

Section 83072(d)(17)(A) – renumbered as Section 83072(c)(17)(A)

This section was originally renumbered from Section 83072(b)(17)(A) to Section 83072(d)(17)(A) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(17)(A) to Section 83072(c)(17)(A) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

This section is being deleted as the information previously contained this section has been moved to Section 83072(c)(17).

Final Modification

Section 83072(d)(18)(B) – renumbered as Section 83072(c)(18)(B)

This section was originally renumbered from Section 83072(b)(18)(B) to Section 83072(d)(18)(B) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(18)(B) to Section 83072(c)(18)(B) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

The phrase “provided the clients are able to exit the facility and” has been added to this section to clarify that, in addition to obtaining licensing approval for using alternative means for securing exterior doors and windows, licensees must ensure that clients still are able to exit the facility.

Final Modification

Section 83072(d)(19) – renumbered as Section 83072(c)(19)

This section was originally renumbered from Section 83072(b)(19) to Section 83072(d)(19) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(19) to Section 83072(c)(19) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

A grammatical correction has been made for clarity.

Final Modification

Sections 83072(d)(21), (d)(21)(A) and (d)(21)(B) – renumbered as Sections 83072(c)(21), (c)(21)(A) and (c)(21)(B)

These sections were originally renumbered from Sections 83072(b)(21), (b)(21)(A) and (b)(21)(B) to Sections 83072(d)(21), (d)(21)(A) and (d)(21)(B) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

These sections have now been renumbered from Sections 83072(d)(21), (d)(21)(A) and (d)(21)(B) to Sections 84072(c)(21), (c)(21)(A) and (c)(21)(B) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

These sections have been deleted in response to public comments. The requirements of these sections were relocated here from Sections 80072(a)(6), 80072(a)(6)(A) and 80072(a)(6)(B) of the General Licensing Requirements in error. The right to leave and depart the facility does not apply to children so this section and its two dependent subsections have been deleted.

Final Modification

Section 83072(d)(22) – renumbered as Section 83072(c)(21)

This section was originally renumbered from Section 83072(b)(22) to Section 83072(d)(22) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(22) to Section 83072(c)(21) to maintain numerical consistency as a result of the original Sections 83072(a) and (c)(21) et seq. being deleted.

Final Modification

Section 83072(d)(23) – renumbered as Section 83072(c)(22)

This section was originally renumbered from Section 83072(b)(23) to Section 83072(d)(23) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section now has been renumbered from Section 83072(d)(23) to Section 83072(c)(22) to maintain numerical consistency as a result of the original Sections 83072(a) and (c)(21) et seq. being deleted.

Final Modification

Section 83072(d)(24) – renumbered as Section 83072(c)(23)

This section was originally renumbered from Section 83072(b)(24) to Section 83072(d)(24) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(24) to Section 83072(c)(23) to maintain numerical consistency as a result of the original Sections 83072(a) and (c)(21) et seq. being deleted.

Final Modification

Section 83072(d)(25) – renumbered as Section 83072(c)(24)

This section was originally renumbered from Section 83072(b)(25) to Section 83072(d)(25) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(25) to Section 83072(c)(24) to maintain numerical consistency as a result of the original Sections 83072(a) and (c)(21) et seq. being deleted.

Final Modification

Section 83072(d)(26) – renumbered as Section 83072(c)(25)

This section was originally renumbered from Section 83072(b)(26) to Section 83072(d)(26) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(26) to Section 83072(c)(25) to maintain numerical consistency as a result of the original Sections 83072(a) and (c)(21) et seq. being deleted.

Final Modification

Section 83072(d)(27) – renumbered as Section 83072(c)(26)

This section was originally renumbered from Section 83072(b)(27) to Section 83072(d)(27) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(27) to Section 83072(c)(26) to maintain numerical consistency as a result of the original Sections 83072(a) and (c)(21) et seq. being deleted.

Final Modification

Section 83072(d)(28) et seq. – renumbered as Section 83072(c)(27) et seq.

This section was originally renumbered from Sections 83072(b)(28) et seq. to Sections 83072(d)(27) et seq. to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

These sections have now been renumbered from Sections 83072(d)(28) et seq. to Sections 83072(c)(27) et seq. to maintain numerical consistency as a result of the original Sections 83072(a) and (c)(21) et seq. being deleted.

Final Modification

Section 83072(d)(28)(A) – renumbered as Section 83072(c)(27)(A)

This section was originally renumbered from Section 83072(b)(28)(A) to Section 83072(d)(28)(A) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(28)(A) to Section 83072(c)(27)(A) to maintain numerical consistency as a result of the original Sections 83072(a) and (c)(21) et seq. being deleted.

A grammatical correction has been made for clarity.

Final Modification

Section 83072(d)(28)(C) – renumbered as Section 83072(c)(27)(C)

This section was originally renumbered from Section 83072(b)(28)(C) to Section 83072(d)(28)(C) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(28)(C) to Section 83072(c)(27)(C) to maintain numerical consistency as a result of the original Sections 83072(a) and (c)(21) et seq. being deleted.

This section has been amended to maintain grammatical consistency with other sections of Small Family Home regulations by using the term “child” instead of “resident”.

Final Modification

Section 83072(d)(28)(F) – renumbered as Section 83072(c)(27)(F)

This section was originally renumbered from Section 83072(b)(28)(F) to Section 83072(d)(28)(F) to maintain numerical consistency as a result of the adoption of new Sections 83072(b) and (c).

This section has now been renumbered from Section 83072(d)(28)(F) to Section 83072(c)(27)(F) to maintain numerical consistency as a result of the original Sections 83072(a) and (c)(21) et seq. being deleted.

This section has been amended to maintain grammatical consistency with other sections of Small Family Home regulations by using the term “child” instead of “resident”.

Post Hearing Modification

New Section 83072(c)(27)(H)

Specific Purpose:

In response to public comments, this section has been adopted to specify that postural supports and protective devices shall not be used for disciplinary purposes.

Factual Basis:

The adoption of this regulation is necessary to make clear that the use of postural supports and protective devices for disciplinary purposes is a violation of children’s rights.

New Section 83072(e)

Specific Purpose:

The Department is adopting this regulation to clarify for licensees that nothing in this section shall be interpreted to require them to take any action that would jeopardize the health and safety of children placed in small family homes.

Factual Basis:

The adoption of this regulation is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedures Act, Government Code Sections 11349(a) and (d), respectively. This regulation is necessary for consistency with Section 16001.9(b) of the Welfare and Institutions Code that requires providers to not take any action based on specified personal rights that would impair the health and safety of children in out-of-home placement.

Final Modifications

Section 83072(e) – renumbered as Section 83072(d)

This section has been renumbered from Section 83072(e) to Section 83072(d) to maintain numerical consistency as a result of the original Section 83072(a) being deleted.

In response to public comments, this section has been amended to accurately reflect the text of Section 16001.9(b) of the Welfare and Institutions Code. The deleted text is not contained in the statute and is not necessary to provide the protections intended by the statute.

Section 84072(a)

Specific Purpose:

The Department is amending this regulation to exclude the personal rights requirements of the General Licensing Requirements for children's residential care.

Factual Basis:

This amendment is necessary to clarify that the personal rights requirements found in this section of the Group Home Regulations stand alone.

Final Modification

Section 84072(a) has been deleted in the interest of precision and clarity. The language in this section served an introductory purpose that was not necessary to convey the meaning of the regulations.

Section 84072(b)

Specific Purpose:

The Department is adopting this regulation to clarify that group home's caring for six or more children shall post a listing of foster children's personal rights.

Factual Basis:

The adoption of this regulation is necessary to meet the "necessity" and "consistency" standard of the Administrative Procedures Act, Government Code Sections 11349(a) and (d), respectively. This regulation is necessary for consistency with Section 1530.91(b) of the Health and Safety Code that requires facilities licensed to provide foster care for six or more children to post a listing of a foster child's personal rights as specified in Section 16001.9 of the Welfare and Institutions Code.

Final Modification

Section 84072(b) – renumbered as Section 84072(a)

This section is being renumbered from Section 84072(b) to Section 84072(a) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

Section 84072(c)

Specific Purpose:

The Department is amending this regulation to ensure that each schoolage child placed in a group home is provided with an orientation clearly explaining the personal rights of the child.

Factual Basis:

This amendment is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedures Act, Government Code Sections 11349(a) and (d), respectively. This regulation is necessary for consistency with Section 1530.91(a) of the Health and Safety Code that requires facilities caring for children to provide each schoolage child with an age and developmentally appropriate orientation explaining the personal rights of children as specified in Section 16001.9 of the Welfare and Institutions Code.

Final Modifications

Section 84072(c) – renumbered as Section 84072(b)

The ISOR inadvertently referred to amending this section. This is a new section and correctly should have been referred to in the ISOR as being adopted. This section was originally adopted as new Section 84072(c).

This section has been renumbered from Section 84072(c) to Section 84072(b) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

In response to public comments received, the phrase “and addresses the child’s questions and concerns” has been incorporated as part of this section.

In the originally proposed regulations, the first sentence had the phrase “who is placed in foster care” inadvertently following the word “representative”, creating an unclear and unnecessary requirement. For clarity, the phrase “who is placed in foster care” now correctly follows the word “child” where the phrase was intended to be when the regulations were originally written.

Section 84072(d) et seq.

Specific Purpose:

The Department is amending this regulation to clarify that each child in care shall be advised and given a copy of their personal rights. This regulation incorporates specified personal rights of the General licensing Requirements and Section 16001.9 of the Welfare Institutions Code in order to list all the personal rights accorded to children placed in a group home.

Factual Basis:

This amendment is necessary to clarify the requirement for licensees, that children in group homes are to be advised and given a copy of their personal rights. Further, this regulation is amended to meet the “necessity” and “consistency” standard of the Administrative Procedures Act, Government Code Sections 11349(a) and (d), respectively. This regulation is necessary for consistency with Section 27 of the Welfare and Institutions Code that requires the Department to list in regulation specified rights of foster children found in Section 16001.9(a) of the Welfare and Institutions Code.

In addition to the personal rights listed in Section 16001.9 of the Welfare and Institutions Code, this regulation incorporates specified personal rights of the General Licensing Requirements in order to list all the personal rights accorded to children placed in a group home. Based on incorporating these rights, the “Personal Rights” section of the Group Home regulations stand alone.

Final Modifications

Section 84072(d) - renumbered as Section 84072(c)

This section was originally renumbered from Section 84072(b) to Section 84072(d) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d) to Section 84072(c) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

Various grammatical corrections have been made for clarity.

Post Hearing Modification

New Section 84072(d)(5)(B)

Specific Purpose:

In response to public comments, this section has been adopted to incorporate the provisions of Section 16001.9(a)(7) of the Welfare and Institutions Code into existing regulations relating to visitation rights of siblings.

Factual Basis:

The adoption of this regulation is necessary to clarify that a foster child's brothers and sisters have the right to visit unless prohibited by court order. This section now accurately reflects the provisions of Section 16001.9(a)(7) of the Welfare and Institutions Code with regards to visits by siblings.

Final Modification

Section 84072(d)(8) – renumbered as Section 84072(c)(8)

This section was originally renumbered from Section 84072(b)(8) to Section 84072(d)(8) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(8) to Section 84072(c)(8) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

Various grammatical corrections have been made for clarity.

Post Hearing Modification

Section 84072(d)(11) – renumbered as Section 84072(c)(11)

Specific Purpose:

This section was originally renumbered from Section 84072(b)(11) to Section 84072(d)(11) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(11) to Section 84072(c)(11) to maintain numerical consistency as a result of the original Section 84072(a) being deleted. In response to public comments received, this section has been amended to accurately reflect the provisions of Welfare and Institutions Code Section 16001.9(a)(9).

Factual Basis:

This amendment is necessary to delete provisions that allowed for prohibitions of phone calls that were not consistent with the provisions of Section 16001.9(a)(9) of the Welfare and Institutions Code. This section was amended to specify that children have the right to make and receive phone calls unless prohibited by court order.

Post Hearing Modification

Section 84072(d)(11)(A) – renumbered as Section 84072(c)(11)(A)

Specific Purpose:

This section was originally renumbered from Section 84072(b)(11)(A) to Section 84072(d)(11)(A) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(11)(A) to Section 84072(c)(11)(A) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

In response to public comments, this section has been amended to specify that licensees can place restrictions on phone use and to provide an introduction into Sections 84072(c)(11)(A)1.-3. which list acceptable reasons for these restrictions.

Factual Basis:

This amendment is necessary to clarify that while children can only prohibited from making and receiving phone calls by court order, licensees can place reasonable restrictions on phone use. Information previously contained in this section regarding reimbursement for long distance calls is now in Section 84072(c)(11)(A)1.

Post Hearing Modification

New Section 84072(c)(11)(A)1.

Specific Purpose:

In response to public comments, this section has been adopted to specify that licensees can place restrictions on long distance phone calls with documentation that they have not received reimbursement for previous calls.

Factual Basis:

The adoption of this section is necessary specify one of the allowable reasons for restrictions to be placed on telephone calls.

Post Hearing Modification

New Section 84072(c)(11)(A)2.

Specific Purpose:

In response to public comments, this section has been adopted to specify that licensees can place restrictions on phone calls in accordance with the facility's discipline policies.

Factual Basis:

The adoption of this section is necessary specify one of the allowable reasons for restrictions to be placed on telephone calls.

Post Hearing Modification

New Section 84072(c)(11)(A)3.

Specific Purpose:

The adoption of this section is necessary specify allowable reasons for restrictions to be placed on telephone calls.

Factual Basis:

In response to public comments, this section has been adopted to specify that licensees can place restrictions telephone use that infringes on the rights of others or restricts the availability of the phone during emergencies.

Post Hearing Modification

Section 84072(d)(11)(B) – renumbered as Section 84072(c)(11)(B)

Specific Purpose:

This section was originally renumbered from Section 84072(b)(11)(B) to Section 84072(d)(11)(B) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(11)(B) to Section 84072(c)(11)(B) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

In response to public comments, this section has been amended to incorporate provisions for documentation of and an approval process for any restrictions placed on telephone use. The requirements previously included in this section have been moved to Section 84072(c)(11)(A)1.

Factual Basis:

This amendment was made in response to concerns expressed in public comments that provisions of existing regulation that allow restrictions on phone use at the licensees' discretion were in conflict with the provisions of AB 899. The language added to this section specifies procedures to be used in approving restrictions on telephone use that protect the children's right to make and receive phone call as provided for in Welfare and Institutions Code Section 16001.9(a)(7).

The language previously contained in this section has been deleted to avoid redundancy since this text is now in Section 84072(c)(11)(A)1.

Final Modification

Section 84072(d)(11)(C) – renumbered as Section 84072(c)(11)(C)

This section was originally renumbered from Section 84072(b)(11)(C) to Section 84072(d)(11)(C) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(11)(C) to Section 84072(c)(11)(C) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

In response to public comments, this section has been amended to specify that children cannot be restricted from making telephone calls to certain individuals as a form of discipline or for non payment of long distance phone charges. The phrase “(including brothers and sister)” was deleted since the term “family member” would already include siblings. The phrase “unless prohibited by a court order” was replaced with “except by court order” for purposes of grammatical precision and clarity.

Final Modification

Section 84072(d)(15) – renumbered as Section 84072(c)(15)

This section was originally renumbered from Section 84072(b)(15) to Section 84072(d)(15) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(15) to Section 84072(c)(15) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

A grammatical correction has been made for clarity.

Final Modification

Section 84072(d)(21) – renumbered as Section 84072(c)(21)

This section was originally renumbered from Section 84072(b)(21) to Section 84072(d)(21) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(21) to Section 84072(c)(21) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

A grammatical correction has been made for clarity.

Final Modification

Section 84072(d)(21)(A) – renumbered as Section 84072(c)(21)(A)

This section was originally renumbered from Section 84072(b)(21)(A) to Section 84072(d)(21)(A) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(21)(A) to Section 84072(c)(21)(A) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

This section has been deleted since it is not regulatory in nature. It provides a procedural reference to the Health and Safety Code that is not necessary to include in the regulations.

Final Modification

Section 84072(d)(22) – renumbered as Section 84072(c)(22)

This section was originally renumbered from Section 84072(b)(22) to Section 84072(d)(22) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(22) to Section 84072(c)(22) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

For correct formatting, the information previously contained in deleted Section 84017(c)(22)(A) has been incorporated into this section.

Final Modification

Section 84072(d)(22)(A) – renumbered as Section 84072(c)(22)(A)

This section was originally renumbered from Section 84072(b)(22)(A) to Section 84072(d)(22)(A) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(22)(A) to Section 84072(c)(22)(A) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

This section is being deleted as the information previously contained this section has been moved to Section 84072(c)(22).

Final Modification

Section 84072(d)(23)(A) – renumbered as Section 84072(c)(23)(A)

This section was originally renumbered from Section 84072(b)(23)(A) to Section 84072(d)(23)(A) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(23)(A) to Section 84072(c)(23)(A) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

This section has been amended in response to public comments. This section was intended to contain provisions transferred from Section 80072(a)(7)(A) of the General Licensing Requirements. Instead, the provisions of Section 80072(a)(6)(A) were transferred in error. This amendment corrects that error by incorporating the provision of Section 80072(a)(7)(A) into this section.

The phrase “provided the clients are able to exit the facility and” has also been added to this section to clarify that, in addition to obtaining licensing approval for using alternative means for securing exterior doors and windows, licensees must ensure that clients still are able to exit the facility.

Final Modification

Section 84072(d)(23)(B) – renumbered as Section 84072(c)(23)(B)

This section was originally renumbered from Section 84072(b)(23)(B) to Section 84072(d)(23)(B) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(23)(B) to Section 84072(c)(23)(B) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

This section has been amended in response to public comments. This section was intended to contain provisions transferred from Section 80072(a)(7)(B) of the General Licensing Requirements. Instead, the provisions of Section 80072(a)(6)(B) were transferred in error. This amendment corrects that error by incorporating the provision of Section 80072(a)(7)(B) into this section.

Final Modification

Section 84072(d)(24) – renumbered as Section 84072(c)(24)

This section was originally renumbered from Section 84072(b)(24) to Section 84072(d)(24) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(24) to Section 84072(c)(24) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

A grammatical correction has been made for clarity.

Final Modification

Section 84072(d)(29) – renumbered as Section 84072(c)(29)

This section was originally renumbered from Section 84072(b)(29) to Section 84072(d)(29) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(29) to Section 84072(c)(29) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

A grammatical correction has been made for clarity.

Final Modification

Sections 84072(d)(32), (d)(32)(A) and (d)(32)(B) – renumbered as Sections 84072(c)(32), (c)(32)(A) and (c)(32)(B)

These sections were originally renumbered from Sections 84072(b)(32), (b)(32)(A) and (b)(32)(B) to Sections 84072(d)(32), (d)(32)(A) and (d)(32)(B) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

These sections have now been renumbered from Sections 84072(d)(32), (d)(32)(A) and (d)(32)(B) to Sections 84072(c)(32), (c)(32)(A) and (c)(32)(B) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

These sections have been deleted in response to public comments. They were transferred from Sections 80072(a)(6), 80072(a)(6)(A) and 80072(a)(6)(B) of the General Licensing Requirements in error. The right to leave and depart the facility does not apply to children so this section and its two dependent subsections have been deleted.

Final Modification

Section 84072(d)(33) – renumbered as Section 84072(c)(32)

This section was originally renumbered from Section 84072(b)(33) to Section 84072(d)(33) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(33) to Section 84072(c)(32) to maintain numerical consistency as a result of previous Section 84072(a) and (c)(32) et seq. being deleted.

Final Modification

Section 84072(d)(33)(A) – renumbered as Section 84072(c)(32)(A)

This section was originally renumbered from Section 84072(b)(33)(A) to Section 84072(d)(33)(A) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(33)(A) to Section 84072(c)(32)(A) to maintain numerical consistency as a result of previous Section 84072(c)(32) et seq. being deleted.

A grammatical correction has been made for clarity.

Final Modification

Section 84072(d)(33)(C) – renumbered as Section 84072(c)(32)(C)

This section was originally renumbered from Section 84072(b)(33)(C) to Section 84072(d)(33)(C) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(33)(C) to Section 84072(c)(32)(C) to maintain numerical consistency as a result of previous Section 84072(a) and (c)(32) et seq. being deleted.

This section has been amended to maintain grammatical consistency with other sections of Group Home regulations by using the term “child” instead of “resident”.

Final Modification

Section 84072(d)(33)(F) – renumbered as Section 84072(c)(32)(F)

This section was originally renumbered from Section 84072(b)(33)(F) to Section 84072(d)(33)(F) to maintain numerical consistency as a result of the adoption of new Sections 84072(b) and (c).

This section has now been renumbered from Section 84072(d)(33)(F) to Section 84072(c)(32)(F) to maintain numerical consistency as a result of previous Sections 84072(a) and (c)(32) et seq. being deleted.

This section has been amended to maintain grammatical consistency with other sections of Group Home regulations by using the term “child” instead of “resident”.

Post Hearing Modification

New Section 84072(c)(32)(H)

Specific Purpose:

In response to public comments, this section has been adopted to specify that postural supports and protective devices shall not be used for disciplinary purposes.

Factual Basis:

The adoption of this regulation is necessary to make clear that the use of postural supports and protective devices for disciplinary purposes is a violation of children’s rights.

Section 84072(e)

Specific Purpose:

The Department is adopting this regulation to clarify for licensees that nothing in this section shall be interpreted to require them to take any action that would jeopardize the health and safety of children placed in group homes.

Factual Basis:

The adoption of this regulation is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedures Act, Government Code Sections 11349(a) and (d), respectively. This regulation is necessary for consistency with Section 16001.9(b) of the Welfare and Institutions Code that requires providers to not take any action based on

specified personal rights that would impair the health and safety of children in out-of-home placement.

Final Modifications

Section 84072(e) – renumbered as Section 84072(d)

This section has been renumbered from Section 84072(e) to Section 83072(d) to maintain numerical consistency as a result of the original Section 84072(a) being deleted.

In response to public comments, this section has been amended to accurately reflect the text of Section 16001.9(b) of the Welfare and Institutions Code. The deleted text is not contained in the statute and is not necessary to provide the protections intended by the statute.

Section 84172(b) and HANDBOOK

Specific Purpose:

The Department is amending this regulation by adding Section 16001.9 of the Welfare and Institutions Code, and Section 1530.91 of the Health and Safety Code. This amendment affords children placed in community treatment facility specified personal rights and ensures that these rights are posted and children are given an orientation clearly explaining these personal rights.

The Handbook is amended to incorporate the provisions of Section 16001.9 of the Welfare and Institutions Code and Section 1530.91 of the Health and Safety Code, respectively.

Factual Basis:

This amendment is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedures Act, Government Code Sections 11349(a) and (d), respectively. This regulation is necessary for consistency with Section 27 of the Welfare and Institutions Code that requires the Department to list in regulation specified rights of foster children found in Section 16001.9(a) of the Welfare and Institutions Code.

This regulation is necessary for consistency with Section 1530.91(a) of the Health and Safety Code that requires facilities caring for children to provide each schoolage child with an age and developmentally appropriate orientation explaining the personal rights of children as specified in Section 16001.9 of the Welfare and Institutions Code.

This regulation is necessary for consistency with Section 1530.91(b) of the Health and Safety Code that requires facilities licensed to provide foster care for six or more children to post a listing of a foster child’s rights as specified in Section 16001.9 of the Welfare and Institutions Code.

The Handbook is amended to incorporate the provisions of Section 16001.9 of the Welfare and Institutions Code, and Section 1530.91 of the Health and Safety Code, respectively.

Section 84272(a)

Specific Purpose/Factual Basis:

The Department is amending this regulation to clearly identify which personal rights do not apply to children under the age of six. Amending this regulation is necessary to exempt children in care who are under the age of six from specific personal rights that are inappropriate for their age.

b) Identification of Documents Upon Which Department Is Relying

Assembly Bill 899, Chapter 683, Statutes of 2001

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact on Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #5 at the Department's public hearing held on September 17, 2003. No testimony was given at the public hearing. Written comments were received during the 45-day public comment period from the following individual:

Debra L. Back (DLBCAI)
Children's Advocacy Institute

The summarized comments and the Department's response follow:

Sections 83072(d) and 84072(d)

1) Comment: (DLBCAI)

“Amended Section 83072, ‘Personal Rights’ for foster youth in small family homes, subsection (d) states that:

- (d) Each child, and his/her authorized representative, shall be personally advised and given at admission a copy of their rights as specified below:

This subsection omits two very important portions of the new law:

- (1) The orientation must be ‘age and developmentally appropriate’ so that the child has a true understanding of those rights, and
(2) During the orientation session, the child’s questions and concerns must be addressed to ensure understanding. See Health and Safety Code Section 1530.91(a).

Amended Section 84072(d) also fails to include these same two requirements.”

Response

Thank you for your comment. Due to the deletion of Sections 83072(a) and 84072(a), the sections referred to in your comment have been renumbered to Sections 83072(c) and 84072(c).

The statement that each child must be provided “with an age and developmentally appropriate orientation that includes an explanation of the rights of the child.” is already included in Sections 83072 (b) and 84072 (b). The phrase “and addresses the child’s questions and concerns” has been added to Sections 83072(b) and 84072(b) in response to your comment.

Section 83072(d)(3)

2) Comment: (DLBCAI)

“Amended Section 83072(d)(3) does not accurately reflect the right enunciated in Welfare and Institution Code section 16001.9(a)(11):

- “...to maintain an emancipation bank account *and manage personal income*, consistent with the child’s age and developmental level, unless prohibited by the case plan.”

In the current proposed language it appears the child’s authorized representative can restrict the child’s right to manage his/her own money, which is not consistent with AB 899. Further, the language in that section should make specific reference to managing personal income.”

Response

Thank you for your comment. Due to the deletion of Section 83072(a), the section referred to in your comment has been renumbered to Section 83072(c)(3).

Section 83072 (c)(3) has been amended to include the phrase “and manage personal income” in response to your comment. This section also provides that any restriction on the child managing his or her money must be agreed to in the needs and services plan and by the authorized representative. It combines the provisions of existing regulation Section 83072(b)(3) with those of Welfare and Institutions Code Section 16001.9(a)(11). The needs and services plan referred to in this section is the term used in regulations for a case plan. This plan must be developed with and signed by the child’s authorized representative. This is consistent with the provisions of Welfare and Institutions Code Section 16001.9(a)(11).

Sections 83072(d)(6) and 84072(d)(11)(A)-(C)

3) Comment: (DLBCAI)

“Amended Section 83072(d)(6) does not accurately reflect the rights contained in Section 16001.9(a)(9) of the Welfare and Institutions Code, which states:

“...to make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by court order.”

See also Sections 16001.9(a)(6) and (a)(15) specifying other rights to contact certain individuals.

The current language in this subsection is far too restrictive in that it:

- Impermissibly allows an authorized representative to prohibit a foster youth from exercising the right to make and receive phone calls;
- Allows restriction of this right by the licensee as a form of discipline;
- It requires that the foster youth’s right to use of the phone not restrict the rights of anyone else (in practice this might always be the case if there is any type of waiting list or line to use a phone); and
- Prohibits such use during times of emergencies (what constitutes an ‘emergency’ is left undefined and vague – what if the youth is trying to call 911 or some other entity or person to help in a time of emergency?).

All of these restrictions are inconsistent with and contrary to the intent of AB 899 and implementing statutes. Subsection 83072(d)(6) needs to be changed to accurately reflect the rights contained in AB 899 and implementing language.

This discussion also applies to amended Section 84072(d)(11)(A)-(C).”

Response

Thank you for your comment. Due to the deletion of Sections 83072(a) and 84072(a), the sections referred to in your comment have been renumbered to Sections 83072(c)(6) and 84072(c)(11).

Sections 83072(c)(6) and 84072(c)(11) have been amended in response to your comment to reflect the language used in Welfare and Institutions Code Section 16001.9(a)(9) and now

explicitly state that children can make and receive confidential telephone calls, unless prohibited by court order.

While the statute provides that telephone calls can only be prohibited by court order, it does not allow for children to make unlimited calls without restrictions. Sections 83072(c)(6) and 84072(c)(11) have been amended in response to your comment to clarify the restrictions that can be placed on phone use and the procedures for authorizing these restrictions.

The authorized representative may not prohibit the child from making or receiving phone calls, but he or she may, upon review of a facility's discipline program and in the development of a needs and services plan for the child, authorize reasonable restrictions to a child's use of the phone. This is within the scope of the duties and responsibilities of the authorized representative and is not in conflict with the provisions of Welfare and Institutions Code Section 16001.9(a)(9). Sections 83072(d)(6)(C) and 84072(d)(11)(C) list the individuals, organizations and entities that the child is able to be in contact with regardless of disciplinary action.

Restrictions on phone use to ensure the availability of the phone in case of emergency and to ensure the rights of others are not infringed upon are also reasonable and necessary for the safety of all children in care and to ensure that all children have telephone access. If a licensee imposes restrictions that a child believes are unreasonable, Sections 83072(c)(15) and 84072(c)(20) give each foster child the right to make a complaint regarding violations with the Department of Social Services, Community Care Licensing Division or the State Foster Care Ombudsman. Any restrictions on phone use are subject to review by Community Care Licensing to ensure that they are reasonable and necessary.

Section 83072(d)(6)(B)

4) Comment: (DLBCAI)

"Further, existing subsection 83072(d)(6)(B) permits the licensee to prohibit exercise of the foster youth's right if the call is long distance and the child owes the facility money from previous long distance calls. The decision to not permit a contact/phone call should not be made by the licensee, but instead should be addressed by the court. What if the child's mother lives in another town and the child does not have any personal assets/money to pay the facility for the call? Is a violation of the child's rights justified in such a case? The court is the more appropriate arbiter of such a dispute."

Response

Thank you for your comment. Due to the deletion of Section 83072(a), the section referred to in your comment has been renumbered as Section 83072(b)(6)(B).

This section has been amended in response to your comment. It now provides that long distance calls to any of the parties listed in Section 83072(c)(6)(C) may not be prohibited due to non payment of long distance bills. Licensees retain the ability to restrict other toll calls for failure of the child to reimburse them for previous calls. Allowing children

unlimited toll calls without reimbursement could place a substantial financial burden on facilities.

Although Section 84072(c)(11)(B) was not mentioned in your comment, the same changes were made to that section in the interest of consistency.

Section 83072(d)(14) and 84072

5) Comment: (DLBCAI)

“The right contained in Welfare and Institutions Code Section 16001.9(a)(7):

“...to visit and contact brothers and sisters, unless prohibited by court order.”

has been left out completely. Although amended Section 83072(d)(14) mentions *contacting* family members, including siblings, the *right to visit those siblings* has been omitted and is inconsistent with AB 899.

This same right is also omitted in the regulations under group homes, Section 84072.”

Response

Thank you for your comment. Due to the deletion of Sections 83072(a) and 84072(a), the sections referred to in your comment have been renumbered as Sections 83072(c)(14) and 84072(c)(19). The language in these sections is taken from Welfare and Institutions Code Section 16001.9(a)(6) with the phrase “...(including brothers and sisters)...” added.

Welfare and Institutions Code Section 16001.9(a)(7) refers to the right of a foster child to visit and contact brothers and sisters. While the right for this contact to occur is addressed in Sections 83072(c)(14) and 84072(c)(19), the foster children’s visitation rights are contained in Sections 83072(c)(1) and 84072(c)(5). The Department concurs that Sections 83072(c)(1) and 84072(c)(5), which were not amended for this regulation package, do not reflect the visitation provisions of Welfare and Institutions Code Section 16001.9(a)(7). In response to your comments, these sections have been amended. They now provide that children have the right to visit with brothers and sisters unless prohibited by court order.

Sections 83072(d)(18) and 84072(d)(23)

6) Comment: (DLBCAI)

“Amended Sections 83072(d)(18) and 84072(d)(23) both state:

To not be locked in any room, building, or facility premises at any time.

These two sections are inconsistent with Welfare and Institutions Code Section 16001.9(a)(12). However, the addition of subsections (A) and (B) in both sets of regulations severely diminish the right afforded by AB 899, and appear inconsistent with the implementing statute.”

Response

Thank you for your comment. Due to the deletion of Sections 83072(a) and 84072(a), the sections referred to in your comments have been renumbered as Sections 83072(c)(18) and 84072(c)(23).

Sections 83072(c)(18) and 84072(c)(23) use substantially the same language as 16001.9(a)(12). Subsections (A) and (B) of Section 83072(c)(18) were brought forward from the General Licensing Requirements. Subsection (A) of Section 83072(c)(18) is necessary to clarify that while licensees cannot lock children in the facility, they can lock doors to prevent intruders from entering the facility, and they can establish rules that prohibit the children from leaving the facility at will. Subsection (B) of Section 83072(c)(18) is necessary to clarify that if the licensee wishes to secure the facility against intruders by means other than locking exterior doors and windows (e.g., security bars) that they would first need to obtain the approval of the licensing agency. Subsections (A) and (B) are consistent with the Welfare and Institutions Code Section 16001.9(a)(1) which states that all children have the right “To live in a safe, healthy, and comfortable home...” and in no way diminish the children’s right not to be locked in a facility.

Subsections (A) and (B) of Section 84072(c)(23) were brought forward, in error, from Section 80072(b)(6) instead of Section 80072(b)(7) of the General Licensing Requirements. These subsections have been deleted from this section in response to your comment. They have been replaced with the same language used in amended subsections (A) and (B) in Section 83072(c)(18).

Sections 83072(d)(21) and 84072(d)(32)

7) Comment: (DLBCAI)

“In addition, Sections 83072(d)(21) and 84072(d)(32) state that foster youth have the right to leave or depart the facility at any time (not one of the enumerated rights in AB 899), but then restricts that right under subsections (A) and (B) by stating that the licensee can set curfews and “other house rules” for the protection of clients and that the right does “not apply to minors for whom a guardian, conservator, or other legal authority has been appointed.” Since these sections are listing the rights of foster youth, what is the point of providing a right then stating it does not apply to minors when foster youth are minors? These sections are confusing and inconsistent.”

Response

Thank you for your comment. Due to the deletion of Sections 83072(a) and 84072(a), the sections referred to in your comment have been renumbered as Sections 83072(c)(21) and 84072(c)(32). These sections are not included among the rights listed in AB 899 and have been deleted in response to your comments.

Sections 83072(d)(21)(A) and 84072(d)(32)(A)

8) Comment: (DLBCAI)

“Further, Sections 83072(d)(21)(A) and 84072(d)(32)(A) grant complete discretion to the licensee to set curfews and other rules presumably to stop a foster youth from leaving the facility. There is no standard for what are reasonable curfews and rules, nor is there any requirement that the child’s rights be considered or given priority in making the rules for the facility. In sum, these sections are entirely inconsistent and confusing in their stated purpose.”

Response

Thank you for your comment. Due to the deletion of Sections 83072(a) and 84072(a), the sections referred to in your comment have been renumbered as Sections 83072(c)(21) and 84072(c)(32). These sections are not included among the rights listed in AB 899 and have been deleted in response to your comments.

Sections 83072(d)(28)(E) and 84072(d)(33)(E)

9) Comment: (DLBCAI)

“Amended Sections 83072(d)(28)(E) and 84072(d)(33)(E) both state:

The licensing agency shall have the authority to grant conditional and/or limited approvals to use postural supports.

Both sections fail to address under what circumstances such approval would be necessary or appropriate, or whether that approval would have to be based upon a physician’s prescription.

It is uncertain whether the licensee facility could utilize these mechanisms for disciplinary purposes, and if so, that would violate the spirit of AB 899, specifically Welfare and Institutions Code Section 16001.9(a)(12) precluding spatial restraints.”

Response

Thank you for your comment. Due to the deletion of Sections 83072(a), 84072(a), 83072(c)(21), and 84072(c)(32), the sections referred to in your comment have been renumbered as Sections 83072(c)(27)(E) and 84072(c)(32)(E).

Sections 83072(c)(27) and 84072(c)(32) provide that all postural supports must be “...approved in advance by the licensing agency.” Sections 83072(c)(27)(A)-(F) and 84072(c)(32)(A)-(F) describe the types of devices that may be used and the reasons for their use and provide that “All requests for postural supports shall be in writing and include a written order of a physician...”. Sections 83072(c)(27)(E) and 84072(c)(32)(E) allow the licensing agency to place conditions or limits on the approval of the use of postural supports, but the license must still meet all of the requirements listed above to obtain licensing approval.

In response to your comment, Sections 83072(c)(27)(H) and 84072(c)(32)(H) have been added to the regulations to specifically prohibit the use of postural supports or protective devices for disciplinary purposes.

Sections 83072(e) and 84072(e)

10) Comment: (DLBCAI)

“Amended Sections 83072(e) and 84072(e) do not mirror the language contained in Section 16001.9(b) of the Welfare and Institutions Code, but instead add a provision which impermissibly extends the language and intent of AB 899.

These sections should both read:

Nothing in this section shall be interpreted to require a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

The remaining language, in both sections, should be deleted.”

Response

Thank you for your comment. Due to the deletion of Sections 83072(a) and 84072(a), the sections referred to in your comment have been renumbered as Sections 83072(d) and 84072(d). These sections have been amended to use the exact language from Welfare and Institutions Code Section 16001.9(b) in response to your comment.

Section 84072(d)(5)

11) Comment: (DLBCAI)

“Amended Section 84072(d)(5) sets limits on when and how a child can have visitors, some of which appear inconsistent with Welfare and Institutions Code Sections 16001.9(a)(7), (a)(10), (a)(13), and (a)(15). It is unclear who makes decisions regarding restricting the rights of foster youth to have visitors and what criteria must be met to prevent a child from seeing a visitor and exercising their rights under AB 899. Specifically, the visitations:

- Must not “infringe on the rights of other children”, an extremely vague and uncertain standard;
- Must not “disrupt planned activities” (planned how far in advance? what if the visitor cannot come back any other time? can there be no exceptions made to the rules?).

Again, the regulation impermissibly allows an authorized representative to restrict the foster youth’s ability to see visitors.

If a court order or case plan specifies such exclusions that would seem reasonable, but the current language is not specific or clear enough to be implemented fairly and consistently by

licensees. The result would likely be violations of the rights of foster youth enumerated herein.”

Response

Thank you for your comment. Due to the deletion of Section 84072(a), the section referred to in your comment has been renumbered as Section 84072(c)(5).

Section 84072(c)(5) addresses the child’s visitation rights in a Group Home. The Department concurs that this section contains provisions that do not accurately reflect the requirements of Welfare and Institutions Code Section 16001.9(a)(7) in relation to the children’s right to have visits from siblings. In response to your comments, Section 84072(c)(5)(B) has been added to specify that sibling visits can only be prohibited by court order.

The other provisions of Section 84072(c)(5) are continued from existing regulations and were not amended in this regulation package. This section does allow licensees some latitude to exercise judgment in setting reasonable restrictions on visits not protected under Welfare and Institutions Code Section 16001.9. The ability of the licensee to make these decisions is necessary to prevent disruptions to the facility’s program. It would not be possible to enumerate every set of circumstances in which it might be necessary for licensees to impose such restrictions. Therefore, the regulation in question provides some general circumstances in which restrictions might be appropriate and allows licensees exercise their judgment in these situations to restrict visits in order to maintain the integrity of the program. If a licensee imposes restrictions that a child believes are unreasonable, Section 84072(c)(20) gives each foster child the right to make a complaint regarding violations with the Department of Social Services, Community Care Licensing Division or the State Foster Care Ombudsman. Any restrictions on visitation are subject to review by Community Care Licensing to ensure that they are reasonable and necessary.

The other sections of the Welfare and Institutions Code referred to in your comments do not specifically discuss visitation rights but instead address the children’s right to attend certain activities or functions, and to have social contact outside of foster care. These rights are all provided for in Sections 84072(c)(22), (24) and (26) of these regulations. The provisions of Section 84072(c)(5) do not restrict these rights.